(d). *Through bills of lading.* The traffic transported in interchange service must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of equipment. Charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions thereof accruing to the carriers by the application of local or proportional rates.

(e). *Inspection of equipment.* It shall be the duty of the carrier acquiring the use of equipment in interchange to inspect such equipment, or to have it inspected in the manner provided in § 207.4 (c) of these rules, and equipment which does not meet the requirements of the safety regulations shall not be operated in the respective services of the interchange carriers until the defects have been corrected. [fol. 118] (f). *Identification of equipment.* The authorized carriers operating equipment in interchange service under this section shall carry with each vehicle so operated a copy of the contract, lease, or other arrangement while the equipment is being operated in the interchange service.

§ 207.6 *Rental of equipment to private carriers and shippers.*

(a). *Renting equipment with drivers.* Unless such service is specified in their operating authorities, authorized carriers shall not rent equipment with drivers to non-carriers.

(b). *Rental of equipment without drivers.* Authorized common carriers shall not rent equipment without drivers to non-carriers.

[fol. 119] Title 49—Transportation

Chapter I—Interstate Commerce Commission

Subchapter B—Carriers By Motor Vehicles

Part 207—Lease and Interchange of Vehicles

Ex Parte No. MC-43

Lease and Interchange of Vehicles By Motor Carriers

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of May, A.D. 1951.

It appearing, That subsequent to an investigation into the lawfulness of the practices of motor common and contract carriers of property, the Commission, division 5, by order dated June 26, 1950, prescribed rules and regulations governing the practices of such carriers in the performance of transportation with motor vehicles owned by others, the interchange of vehicles between such common carriers, and the lease of vehicles by any such carriers to private motor carriers and shippers (15 F.R. 4339, July 8, 1950):

It further appearing, That by order entered September 5, 1950 (15 F.R. 6125, Sept. 12, 1950), the effectiveness of said regulations was postponed indefinitely;

And it further appearing, That pursuant to order dated September 22, 1950, reopening the proceeding and setting it down for oral argument, such oral argument has been held, and, that after reconsideration by the entire Commission, the Commission, on the date hereof, has made and filed a report on oral argument containing its findings of fact and conclusions thereon, which report is hereby made a part hereof;

It is ordered, That the following rules and regulations are hereby prescribed to become effective on August 1, 1951;

Sec.

207.1 Applicability.

207.2 Definitions.

207.3 Exemptions.
207.4 Augmenting equipment.
207.5 Interchange of equipment.
207.6 Rental of equipment to private carriers and shippers.

Authority: §§ 207.1 to 207.6 issued under 49 Stat. 546, as amended; 49 U.S.C. 304.

§ 207.1 *Applicability.* The rules and regulations in this part apply to the augmenting of equipment by common and contract carriers of property by motor vehicle in interstate or foreign commerce subject to Part II of the Interstate Commerce Act, 49 U.S.C. 301 et. seq; to the interchange of equipment between such common carriers of property by motor vehicle, and to the lease of equipment by common and contract carriers of property by motor vehicle, with or without drivers, to private motor carriers and shippers.

§ 207.2 *Definitions.* (a). *Authorized carrier.* A person or persons authorized to engage in the transportation of property 206, 207, or 209 of the Interstate Commerce Act, 49 U.S.C. 306, 307, or 309.

[fol. 120] (b). *Equipment.* A motor vehicle, straight truck, tractor, semi-trailer, full trailer, combination tractor-and-semi-trailer, combination straight truck and full trailer, and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange of equipment.* The physical exchange of equipment between motor common carriers or the receipt by one such carrier of equipment from another such carrier, in furtherance of a through movement of traffic, at a point or points which such carriers are authorized to serve.

(d). *Regular Employee.* A person not merely an agent but regularly in exclusive full-time employment.

(e). *Agent.* A person duly authorized to act for and on behalf of an authorized carrier.

(f). *Non-carrier.* A person other than an authorized carrier.

(g). *Owner.* A person to whom title to equipment has been issued, or who has lawful possession of equipment, and has the same registered and licensed in any State or States or the District of Columbia in his or its name.

§ 207.3 Exemptions. Other than § 207.4 (c) and (d), relative to inspection and identification of equipment these rules shall not apply—

(a). To equipment leased by one authorized carrier operating over regular routes to another authorized carrier operating over regular routes and operated between points and over routes which both lessor and lessee are authorized to serve, and to equipment leased by one authorized carrier operating over irregular routes to another such carrier and operated between points and within territory which both the lessor and lessee are authorized to serve;

(b). To equipment utilized wholly or in part in the transportation of railway express traffic, or in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations on railroad billing;

(c). To equipment utilized in transportation performed solely and exclusively within any municipality, contiguous municipalities, or commercial zone, as defined by the Commission;

(d). To equipment utilized by an authorized carrier in transportation performed pursuant to any plan of operation approved by the Commission in a proceeding arising under section 5 of the Interstate Commerce Act, or

(e). To equipment without drivers leased by an authorized carrier from an individual, copartnership or corporation, whose principal business is the leasing of equipment without drivers for compensation.

§ 207.4 *Augmenting equipment.* Other than equipment exchanged between motor common carriers in interchange service as defined in § 207.5 of these rules, authorized carriers may perform authorized transportation in or with

equipment which they do not own only under the following conditions:

[fol. 121] (a). The contract, lease, or other arrangement for the use of such equipment—

(1). Shall be made between the authorized carrier and the owner of the equipment;

(2). Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements;

(3). Shall specify the period for which is applies, which shall be not less than 30 days when the equipment is to be operated for the authorized carrier by the owner or employees of the owner; provided, that for six months from the date these rules become effective, equipment specified in section 203(b)(6) of the Act 49 U.S.C. 303(b)(6) may be utilized by authorized carriers under contracts, leases or other arrangements applying for less than 30 days, only under the following condition:

(i). The equipment is being returned over reasonably direct routes from the destinations of shipments of the commodities specified in section 203(b)(6) of the Act 49 U.S.C. 303 (b)(6) or points, intermediate thereto, or the commercial zones of such destinations and intermediate points, as defined by the Commission, to the origins of such shipments, or points intermediate thereto, or the commercial zones of such origins and intermediate points, as defined by the Commission;

(4). Shall provide for the exclusive possession, control and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the authorized carrier, as follows:

(i). When entered into by parties other than authorized carriers of household goods, as defined by the Commission, for the duration of the said contract, lease or other arrangement, and the

equipment shall not be further leased or sublet to any other authorized carrier or non-carrier for such duration;

(ii): When entered into by authorized carriers of household goods, as defined by the Commission, during the period the equipment is operated by or for the authorized carrier, lessee;

(5). Shall specify the compensation to be paid by the lessee for the rental of the leased equipment; provided, however, that such compensation shall not be computed on the basis of any division or percentage of any applicable rate or rates on any commodity or commodities transported in said vehicle or on a division or percentage of any revenue earned by said vehicle during the period for which the lease is effective;

[fol. 122] (6). Shall specify the time and date or the circumstance on which the contract, lease, or other arrangement begins, and the time or the circumstance on which it ends. The duration of the contract, lease or other arrangement shall coincide with the time for the giving of receipts for the equipment as required by paragraph (b) of this section; and

(7). Shall be executed in triplicate; the original shall be retained by the authorized carrier in whose service the equipment is to be operated, one copy shall be retained by the owner of the equipment, one copy shall be carried on the equipment specified therein during the entire period of the contract, lease, or other arrangement, unless a certificate as provided in paragraph (d)(2) of this section ~~is carried~~ in lieu thereof.

(b). *Receipts.* When possession of the equipment is taken by the authorized carrier or its regular employee or agent duly authorized to act for it, said carrier, employee, or agent shall give to the owner of the equipment, or the owner's employee or agent a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is taken; and when the possession by the authorized carrier ends, it or its employee or agent shall obtain from the owner of the equipment, or its regular

employee or agent duly authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time of day possession thereof is taken.

(c). *Inspection of equipment.* It shall be the duty of the authorized carrier, before taking possession of equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of the carrier, in order to insure that the said equipment complies with parts 193 and 196 of the Motor Carrier Safety Regulations (Rev.), pertaining to "Parts and Accessories Necessary for Safe Operations", and "Inspection and Maintenance", and if explosives or other dangerous articles are to be transported thereon, further to inspect and check such vehicles or equipment to insure that they or it complies with Part 197 of the said safety regulations pertaining to "Safe Transportation of Explosives". The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier, and if his inspection discloses that the equipment does not comply with the requirements of the said safety regulations, possession thereof shall not be taken. In all instances in which the inspection required by this rule is made, the authorized carrier, if an individual, or a member of the copartnership if the authorized carrier is a copartnership, or one of the officials thereof if the authorized carrier is a corporation, shall certify on the inspection report that the person who made the inspection, whether an employee or person other than an employee, is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of such authorized carrier

[fol. 123] Report of Vehicle Inspection

Description of vehicle: Make..... Year..... Model.....
Serial No.....
Type: Tractor..... Trailer..... Semitrailer.....
License plate: No..... State.....
Owner's name .....
Name of authorized carrier.....

Indicate in the proper column the result of the inspection of each item listed:

Item	*Not Defective*	*Defective*	*Description of Defect*
Body	.....	.....	.....
Brakes	.....	.....	.....
Cooling system	.....	.....	.....
Drive line	.....	.....	.....
Emergency equipment	.....	.....	.....
Engine	.....	.....	.....
Exhaust	.....	.....	.....
Fuel system	.....	.....	.....
Glass	.....	.....	.....
Horn	.....	.....	.....
Leaks	.....	.....	.....
Lights (state which)	.....	.....	.....
Reflectors	.....	.....	.....
Speedometer	.....	.....	.....
Springs	.....	.....	.....
Steering	.....	.....	.....
Tires	.....	.....	.....
Wheels	.....	.....	.....
Windshield wiper	.....	.....	.....

Any other items requiring attention: .....
.....

I hereby certify that on the day of , I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection.

.....
(Signature of person making inspection).

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of .....

.....

(Name of authorized carrier)

Date..... .....

(Signature of authorized carrier or copartner or officer of authorized carrier.)

[fol. 124] (d). *Identification of equipment.* The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment as operated by it when such equipment is operated by or for such carrier, during the period of the lease, contract, or other arrangement, in accordance with the Commission's requirements in Ex Parte No. MC-41; Part 166, Identification of Motor-Carrier Vehicles. If a removable device is used to identify the authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(1). The authorized carrier operating equipment under these rules shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.

(2). Unless a copy of the lease, contract, or other arrangement is carried on the equipment, as provided in paragraph (a)(7) of this section, the authorized carrier or its regular employee or agent shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, contract or other arrangement, the period thereof, any restrictions therein relative to the commodities to be transported, and the location of the premises where the original of the lease, contract

or other arrangement is kept by the authorized carrier, which certificate shall be carried with the equipment at all times during the entire period of the lease, contract or other arrangement.

(e). *Driver of equipment.* Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under these rules, it shall be the duty of the authorized carrier to make certain that such driver is familiar with, and that his employment as a driver will not result in, violation of any provision of Parts 192, 193, 195, and 196 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Driving of Motor Vehicles", "Parts and Accessories Necessary for Safe Operation", "Hours of Service of Drivers", and "Inspection and Maintenance", and to require such driver to furnish a certificate of physical examination in accordance with Part 191 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Qualifications of Drivers", or, in lieu thereof, a photostatic copy of the original certificate of physical examination, which shall be retained in the authorized carrier's file.

(f). *Record of use of equipment.* The authorized carrier utilizing equipment operated under these rules shall prepare and keep a manifest covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment, the make, model, year, serial number, and the State registration [fol. 125] number of the equipment, and the name and address of the driver operating the equipment, point of origin, the time and date of departure, the point of final destination, and the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to these regulations is operated there shall be carried with the equipment, bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers, together with the truck manifest, shall be preserved by the authorized carrier.

§ 207.5 *Interchange of equipment.* Authorized common carriers may by contract, lease, or other arrangement, interchange any equipment defined in § 207.2 of these rules with one or more other such common carriers, or one of such carriers may receive from another such carrier, any of such equipment, in connection with any through movement of traffic, under the following conditions:

(a). *Agreement providing for interchange.* The contract, lease, or other arrangement providing for interchange shall specifically describe the equipment to be interchanged; the specific points of interchange; the use to be made of the equipment and the consideration for such use; and shall be signed by the parties to the contract, lease or other arrangement, or their regular employees or agents duly authorized to act for them, in the execution of such contracts, leases, or other arrangements;

(b). *Authority of carriers participating in interchange.* The certificates of public convenience and necessity held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement, and service from and to the point where the physical interchange occurs.

(c). *Driver of interchanged equipment.* Each carrier must assign its own driver to operate the equipment that is proposed to be operated from and to the point or points of interchange and over the route or routes or within the territory authorized in the participating carriers' respective certificates of public convenience and necessity.

(d). *Through bills of lading.* The traffic transported in interchange service must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of equipment. Charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions thereof accruing to the carriers by the application of local or proportional rates.

(e). *Inspection of equipment.* It shall be the duty of the carrier acquiring the use of equipment in interchange to inspect such equipment, or to have it inspected in the man-

ner provided in § 207.4 (c) of these rules, and equipment which does not meet the requirements of the safety regulations shall not be operated in the respective services of the interchange carrfers until the defects have been corrected.

[fol. 126] (f). *Identification of equipment.* The authorized carriers operating equipment in interchange service under this section shall carry with each vehicle so operated a copy of the contract, lease, or other arrangement while the equipment is being operated in the interchange service.

§ 207.6 *Rental of Equipment to private carriers and shippers.*

(a). *Renting equipment with drivers.* Unless such service is specified in their operating authorities, authorized carriers shall not rent equipment with drivers to non-carriers.

(b). *Rental of equipment without drivers.* Authorized common carriers shall not rent equipment without drivers to non-carriers.

Notice of this order shall be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission.

[SEAL.]

W. P. Bartel, Secretary

[fol. 127] APPENDIX "B" TO COMPLAINT

Interstate Commerce Commission

49 CFR, Part 207

Ex Parte No. MC-43

Lease and Interchange of Vehicles By Motor Carriers

Notice of Proposed Rule Making

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 9th day of January, A. D. 1948.*

Sections 202(a), 204(a)(1), (2), and (6), 215, 216(b), (c), and (e), 220(a) and (d), and 224 of the Interstate Commerce Act being under consideration; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted by the Commission, Division 5, on its own motion, into the lawfulness of the practices of motor common and contract carriers of property respecting the performance of transportation in interstate or foreign commerce, subject to the general provisions of part II of the Act, by such carriers with motor vehicles owned by others, including those driven by the owners of the vehicles or employees of the owners of the vehicles, and including the use by one such motor carrier of part of the carrying capacity of a vehicle owned by another, the interchange of vehicles between such motor carriers, and the lease of vehicles by such motor carriers, with and without drivers, to private motor carriers and shippers, with a view to determining (1) whether any or all of the present practices of the said

*The order of the Interstate Commerce Commission complained of, decided May 8, 1951, which is attached hereto and made a part hereof as Appendix ———, erroneously states on Page 1 thereof that this investigation was instituted on January 8, 1948.

carriers, with respect to the performance of transportation by the use of vehicles owned by others, the interchange of vehicles, and the leasing of vehicles to private carriers and shippers, should be required to be discontinued because unlawful or contrary to the public interest; and if any or all of the present practices are to be continued (2) whether—

(a) The renting of vehicles by or to motor common and contract carriers, with of without drivers, should be limited to long-term leases;

(b) the use of leased vehicles by motor common and contract carriers should be limited to a fixed percentage of the number of vehicles to which the using motor carrier holds title; and

(c) the motor carriers' practices should be governed by the rules and regulations set forth in tentative form in the attached appendix or such other rules and regulations as may be found to be reasonable;

and to take such other action in the premises as the facts and circumstances shall appear to warrant.

[fol. 128] *It is further ordered*, That all motor common and contract carriers of property subject to the general provisions of part II of the Act be, and they are hereby, made respondents to this proceeding.

It is further ordered, That the proceeding be, and it is hereby, assigned for hearing before Examiner C. Evans Brooks, at 9:30 o'clock a.m., United States standard time, on the 19th day of April, A. D. 1948, at the office of the Interstate Commerce Commission, Washington, D.C.

It is further ordered, That any person desiring to be notified of any change in the time or place of the said hearing (at his own expense, if telegraphic notice becomes necessary) shall inform the Interstate Commerce Commission, Washington, D. C., to that effect by notice which must reach the Commission on or before February 16, 1948.

And it is further ordered, That a copy of this order be served upon each of the respondents and that notice to the general public be given by posting a copy of it in the office

of the Secretary of the Commission at Washington, D. C., and by filing it with the Division of the Federal Register.

By the Commission, division 5.

[SEAL.]

W. P. Bartel, Secretary

[fol. 129] Rules Proposed for Consideration, Governing the Practices Resulting from Agreements, Contracts, or Leases Entered into by Authorized Carriers of Property for the Purpose of (1) Augmenting their Equipment, (2) Interchange of Equipment, and (3) Renting of Vehicles or Equipment to Private Carriers or Shippers.

Rule 1. *Definitions.*

a. Authorized carrier.—A person or persons authorized by the Interstate Commerce Commission to engage in transportation of property as common or contract carriers under the provisions of Sections 206, 207, 208, or 209 of Part II of the Interstate Commerce Act.

b. Equipment.—A motor vehicle, straight truck, tractor, semi-trailer, full trailer, or a combination tractor and semi-trailer and combination straight truck and full trailer.

c. Interchange of equipment.—The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

d. Regular employee.—A person not an agent but regularly and in exclusive full time employment.

e. Non-carrier.—A person other than an authorized carrier.

Rule 2. Augmenting Equipment. Authorized carriers may perform authorized transportation in vehicles to which they do not hold title only under the conditions specified in this rule, except that vehicles and equipment rented or leased from another authorized carrier may be utilized in interchange service only as provided in Rule 3 of these regulations.

a. Contract, lease, or other arrangement for the use of equipment under this rule—

(1). Shall be in writing and signed by the makers;

(2). Shall be made direct between the owner of the equipment or a person in his regular employ, on the one hand, and the authorized carrier or a regularly employed supervisory employee of the carrier, on the other hand;

(3). Shall provide for the exclusive use of the equipment during the full period of the lease and shall not permit the subletting or subleasing of the equipment in whole or in part, or permit use of the equipment for the transportation of property of the lawful owner of the equipment, or property which is in his custody or control as agent of shippers; and

(4). Shall specify the time and date the contract, lease, or other arrangement begins and ends, which shall be the times of the giving of receipts for the equipment as required by Rule 2b.

b. Equipment may be used under this rule only during the time it is in possession of the authorized carrier. The authorized carrier or its regularly employed supervisory employee shall, at the time it takes possession, give to the owner or its agent, a receipt specifically identifying the equipment; and, at the time its possession ends, shall obtain from the owner or its agent, a receipt delivered to the authorized carrier or its regularly employed supervisory employee.

c. Compensation for the use of the equipment shall be computed on a use (such as time or mileage) basis, and no contract, lease, or other arrangement for the use of equipment under this rule shall provide for payment for such use based on the revenue earned by the equipment.

[fol. 130] *d.* It shall be the duty of the authorized carrier, before taking possession of equipment in accordance with Rule 2b, to require a responsible and competent regular employee to inspect the equipment proposed to be used under this rule to insure that it complies with Parts 3 and 6 of the Motor Carrier Safety

Regulations (Rev.) pertaining to "Parts and accessories necessary for safe operations" and "Inspection and Maintenance" and if it is proposed to transport explosives or other dangerous articles further to inspect and check such vehicle or equipment to insure that it complies with Part 7 of the Safety Regulations pertaining to "Safe Transportation of Explosives". If it is found that the equipment proposed to be rented does not comply with the safety regulation requirements, possession shall not be taken.

e. The authorized carrier acquiring the use of the equipment shall properly and correctly identify such equipment as operated by it during the period of the contract, lease, or other arrangement in accordance with the Commission's requirements and in the following manner:

(1). If a removable device is used to identify the authorized carrier as the operating carrier, such device shall be on durable material, such as wood, plastic, or steel, and bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use on rented equipment.

(2). Proper record of the affixing of the removable device shall be maintained at the authorized carrier's terminal and shall show the serial number of the device that is affixed to the rented equipment, the date affixed, the name and address of the lawful owner of the equipment, the State registration number of the equipment to which device is affixed, and the date the device was removed by the authorized carrier.

(3). The authorized carrier shall remove the device upon relinquishing possession in accordance with Rule 2b, and before final settlement for the rental charges is made.

f. The authorized carrier shall prepare and preserve for two years a truck or load manifest covering

each load or trip for which the equipment is used in its service, such manifest record to show—.

(1). Name and address of the lawful owner of the equipment;
(2). State registration number of the equipment;
(3). Name and address of the driver operating the equipment.
(4). Description and weight of the commodities transported in the equipment;
(5). Point or place of origin and time and date of departure;
(6). Point and place of final destination and time and date of arrival; and
(7). Carrier's serial number of identification device affixed to the equipment.

g. Before any person other than a regular employee of the carrier is engaged and assigned to drive equipment operated under this rule, it shall be the duty of the authorized carrier to—

[fol. 131] (1). Insure that the driver is familiar with Parts, 2, 4, and 5 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Driving of motor vehicles", "Reporting of accidents", and "Hours of service of drivers"; and
(2). Require such drivers to furnish a certificate of physical examination in accordance with Part 1 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Qualifications of drivers", or in lieu thereof furnish a photostatic copy of the original certificate of physical examination which shall be retained in the authorized carrier's files for a period of not less than two years after the termination of the driver's employment.

h. The person assigned to drive equipment operated under this rule shall be an employee of the carrier, and his wages shall be separate and distinct from the charges made for the use of the equipment and shall not be made part of the terms of conditions of the

contract, lease, or other arrangement covering the use of the equipment.

i. The terms and conditions of the agreement, contract, or lease for the use of the equipment, shall be in writing and shall set forth (1) the charges to be made for the use of the equipment, (2) the method of arriving at such charges, (3) a complete statement of all the terms, agreements, or practices affecting the charges or the value of the rental service, and (4) the time and date the agreement, contract, or lease begins and ends together with a written endorsement of each party to such agreement, contract, or lease that (a) it contains an accurate and complete statement of the terms thereof, (b) the equipment covered in the agreement has been inspected and checked and found to meet the requirements of Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.), and if it is proposed to transport explosives or other dangerous articles that it also meets the requirements of Part 7 of the Safety Regulations pertaining to "Safe transportation of explosives", and (c) the authorized carrier acquiring the use of the equipment will exercise full control, direction, and domination of the service and accepts full responsibility to the general public, shipper, and Interstate Commerce Commission for the transportation furnished to the same extent as if it were the lawful owner of the equipment for the duration of the agreement, contract, or lease.

j. It shall be the duty of the authorized carrier acquiring the use of the equipment to have the agreement, contract, or lease, as set forth in these regulations, prepared in writing and duly executed by both parties before the arrangement is placed in effect, to retain in its files for not less than two years after the termination of the arrangement the original copy of the written agreement, contract, or lease, and to furnish the driver of the equipment a true and certified copy of such agreement, lease, or contract to be carried in his possession while driving the rented equipment during the full period of the arrangement.

k. The provisions of paragraphs a, c, d, and h of

this rule shall not apply to operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding and specifically approved by the Commission.

[fol. 132] Rule 3. *Interchange of equipment.* Authorized carriers may not interchange equipment, excepting that common carriers of property may by agreement, contract, or lease interchange semi-trailer or full trailer equipment with other common carriers of property for the purpose of transporting through traffic under the following conditions:

a. Proposed through service is from a point on one carrier's lines to a point on the other carrier's lines, both of which points are not authorized in a certificate held by either carrier.

b. Contract, lease, or other arrangement for the use of the equipment is made direct by the carrier who is the lawful owner of the equipment and another carrier proposing to acquire the use of the equipment, or by persons who are in their regular employ, provided that the arrangement will not permit the subletting or subleasing of the equipment in whole or in part.

c. The certificates held by the carriers participating in the interchange arrangement authorize the transportation of the commodities proposed to be transported in the through movement and further authorize service from and to the points where the physical interchange occurs.

d. Each carrier assigns its own driver to operate the tractor or straight truck that it proposed to be operated in combination with the rented semi-trailer or full trailer from and to the point of interchange and over the route or routes authorized in the participating carriers' respective certificates.

e. Traffic moves on through bills of lading issued by the carrier originating the traffic which shall show the name of the carrier with which it is proposed to interchange equipment. The rates charged and revenues collected shall be accounted for in precisely the same manner as if there had been no interchange of equip-

ment and in the manner prescribed by the Commission. The charge for the rental of the equipment shall be separate and distinct from the divisions of the joint rates or the proportions accruing to the carriers by the application of local or proportional rates.

f. It shall be the duty of the carrier that acquires the use of the equipment in interchange service to require a responsible and competent employee to inspect the equipment before it is accepted and operated over its lines to insure that such equipment complies with Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Parts and accessories necessary for safe operation" and "Inspection and maintenance." If it is proposed to transport explosives and other dangerous articles, a further inspection or check shall be made to insure that the equipment complies with the provisions of Part 7 of the Motor Carrier Safety Regulations (Rev.) pertaining to the "Safe transportation of explosives." If the equipment is found not to meet the safety regulation requirements, it shall be the duty of both carriers not to permit its operation in their respective service until the defects have been corrected.

g. The terms and conditions of the agreement, contract, or lease for the use of the equipment shall set forth—

(1). The charges to be made for the use of the equipment which shall have no relation to the lawfully filed rates and charges of the carriers participating in the arrangement;

(2). The method of arriving at such charges;

[fol. 133] (3). A complete statement of all the terms, agreements, or practices affecting the charges or the value of the rental service;

(4). Time and date agreement, contract, or lease begins and ends;

(5). Specific points or places where physical interchange of equipment will occur; and

(6). A description of the type of equipment proposed to be interchanged

h. The agreement, contract, or lease shall include a written endorsement of each carrier participating in the agreement that (1) it contains an accurate and complete statement of the terms thereof, (2) the equipment covered in the agreement has been inspected and checked and found to meet the requirements of Parts 3, 6, and 7 of the Motor Carrier Safety Regulations (Rev.) and (3) the carrier acquiring the use of the equipment will exercise full control, direction, and domination of the service and accepts full responsibility to the general public, shipper, and Interstate Commerce Commission for the transportation furnished to the same extent as if it were the lawful owner of the equipment while operating over its lines for the duration of the agreement, contract, or lease. The agreement, contract, or lease as set forth in these regulations shall be prepared in writing and duly executed by the interested parties, copies of which shall be retained in the files of each of the participating carriers at their principal place of business for not less than two years after the termination of the arrangement.

Rule 4. *Rental of motor vehicles and equipment to private carriers or shippers.*

a. Authorized carriers are prohibited from renting equipment to non-carriers with drivers, and shall not directly or indirectly assist such non-carriers to select or obtain drivers for equipment rented to them.

b. Authorized carriers may not furnish equipment without drivers to non-carriers except under the following conditions:

(1). The agreement, contract, or lease is made direct between the authorized carrier who is the lawful owner of the equipment and the private carrier or shipper or between persons who are in their regular employ.

(2). Period of the agreement, contract, or lease is for not less than 180 days.

(3). Arrangement, contract, or lease for the use of equipment shall provide for the exclusive use

of the equipment during the full period of the rental agreement and shall not permit the subletting or subleasing of such equipment in whole or in part.

(4). Before the effective date of the agreement, contract or lease, the authorized carrier shall cause to be removed from the equipment all marks of identification that indicate that such equipment is utilized in its operations. The authorized carrier's markings or identifications removed from the equipment will not be restored until the termination of the agreement.

(5). It shall be the duty of the private carrier or shipper to require a responsible and competent person in its regular employ to inspect the equipment proposed to be rented to insure that the equipment complies with Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.) per-[fol. 134] taining to "Parts and accessories necessary for safe operation" and "Inspection and Maintenance". In the event that it is proposed to transport explosives and other dangerous articles, a further inspection or check shall be made to insure that the equipment complies with the provisions of Part 7 of the Safety Regulations pertaining to "Safe transportation of explosives." If the equipment is found not to meet these requirements, it shall be the duty of the private carrier or shipper not to operate such equipment.

(6). The terms and conditions of the agreement, contract, or lease for the use of the equipment shall be in writing and shall set forth (a) the charges to be made for the use of the equipment, (b) the method of arriving at such charges, (c) a complete statement of all the terms, agreements, or practices affecting the charges or the value of the rental service, and (d) the time and dates the agreement, contract, or lease begins and ends.

(7). The agreement, contract, or lease shall include a written endorsement of each party thereto that (a) an accurate and complete statement of

the terms thereof, (b) the equipment covered in the agreement has been inspected and checked and found to meet the requirements of parts 3, 6, and 7 of the Motor Carrier Safety Regulations (Rev.), and (c) the private carrier or shipper acquiring the use of the equipment will exercise full control, direction, and domination of the service and accepts full responsibility to the general public and the Interstate Commerce Commission for the transportation furnished to the same extent as if it were the lawful owner of the equipment for the duration of the agreement, contract, or lease.

(8). It shall be the duty of both the authorized carrier and private carrier or shipper to prepare the agreement, contract, or lease as set forth in these regulations in writing, duly execute same before the arrangement is made effective, and to retain in each of its files for not less than two years after the termination of the arrangement true copies of the agreement, contract, or lease, the original of which shall be mailed by the authorized carrier, five days before its effective date, to the district office, Bureau of Motor Carriers, Interstate Commerce Commission, in which it is domiciled.

[fol. 135] APPENDIX "C" TO COMPLAINT

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of August, A. D. 1951.

Ex Parte No. MC-43

Lease and Interchange of Vehicles By Motor Carriers

Upon consideration of the record in the above-entitled proceeding, and of petitions of American Trucking Associations, Inc., and the parties listed in the appendix hereto, for reconsideration of the Commission's report and order

of May 8, 1951, and other relief, and replies to some of the petitions; and good cause appearing therefor:

It is ordered, That the said petitions be, and they are hereby, denied; for the reasons (1) that the evidence justifies the rules prescribed by the Commission in its order of May 8, 1951, and (2) that the petitions do not set forth any substantial grounds that would warrant the granting of any of the relief sought.

By the Commission.

(SEAL.)

W. P. Bartel, Secretary

[fol. 136] APPENDIX

LIST OF PETITIONERS

Secretary of Agriculture.
Manufacturing Chemists Association, Inc.
Movers Conference of America, et al.
National Automobile Transporters Association.
Greyvan Lines, Inc.
Motor Cargo, Inc., et al.
The Kaplan Trucking Company, et al.
The Transport Corporation.
Interstate Motor Freight System.
Coats Motor Transfer Company.
Watkins Motor Lines, Inc., et al.
Eastern Motor Express, Inc.
Michigan Motor Freight Lines, Inc., et al.
Association of Highway Steel Transporters, Inc.
Webb Transfer Line, Inc., et al.
Miller Motor Express, Inc.
Be-Mac Transport Co., Inc.
Grever Truck Line.
Oklahoma-Louisiana Motor Freight Company, Inc.
E. L. Powell and Sons Trucking Co.
Wilson Truck Co.
American Transfer & Storage Co.
W. J. Record and Sons Trucking Company
Van Stone, doing business as Stone Trucking Co.

John W. Presley, doing business as Security Trucking Co.
Long Transportation Company.
Akron-Chicago Transportation Co., Inc.
Dixie Ohio Express Co.
Continental Transportation Lines, Inc.
Service Transport Co.
The J. Miller Company, et al.
Summit Fast Freight, Inc., et al.
Kramer Bros. Freight Lines, Inc.
Wenham Transportation, Inc.
Cooper-Jarrett, Inc.
All States Freight, Inc.
Middlewest Eastern Seaboard Motor Carriers Conference, Inc.
Berrodin Transport, Inc., et al.
Transamerican Freight Lines, Inc.
American Transit Lines, Inc.
Gordons Transports, Inc., et al.
Heavy Haulers, Inc.
Sam W. Lacy, doing business as Lacy Transport Company
Motor-Ways, Inc.
Chicago Express, Inc.
Liberty Motor Freight Lines, Inc., et al.
Pacific Motor Trucking Company.
Austin Truck Service, et al.
Yankee Lines, Inc.
H. W. Brown Transportation Co., Inc.
North American Van Lines, Inc., et al.
Farson Motor Lines, Inc.
Case Driveaway, Inc.
R. N. Ellsworth, doing business as Ellsworth Sales Co.
E. Brooke Matlack, Inc., et al.

[fol. 137] APPENDIX "D" TO COMPLAINT

Carrier Operating Property of Plaintiffs As Shown By Annual Reports For 1950 Filed With The Defendant Interstate Commerce Commission

Eastern Motor Express, Inc.	$ 896,600
A.C.E. Transportation Company, Inc.	582,066
The Akron-Chicago Transportation Company, Incorporated	478,537
All States Freight, Inc.	1,432,438
Chicago Express, Inc.	582,066
Continental Transportation Lines, Inc.	1,424,457
Cooper-Jarrett, Inc.	547,894
Dixie Ohio Express Co.	1,506,447
Interstate Motor Freight System	1,661,547
Kramer Bros. Freight Lines, Inc.	1,605,223
Liberty Motor Freight Lines, Incorporated	132,916
Long Transportation Co.	64,329
Mid-States Freight Lines, Inc.	1,563,939
Midwest Freight Forwarding Co.	191,700
Motor Cargo, Inc.	2,975,362
Roadway Express, Inc.	3,457,838
Spector Motor Service, Inc.	350,930
Summit Fast Freight, Inc.	1,623,206
Transamerican Freight Lines, Inc.	4,528,684
Yankee Lines, Inc.	405,001
	$25,699,160

[fols. 138-139] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DESIGNATING THREE JUDGE COURT

The undersigned Chief Judge of the Court of Appeals for the Seventh Circuit, having been notified by Honorable William E. Steckler, United States District Judge for the Southern District of Indiana, of an application for injunction and other relief in the above entitled cause, does here-

by, pursuant to Sec. 2284 of the Revised Judicial Code, designate the Honorable Otto Kerner, Circuit Judge of the United States Court of Appeals for the Seventh Circuit, and the Honorable Casper Platt, a United States District Judge for the Eastern District of Illinois, to serve as members of a three-judge district court to hear and determine the above-designated action or proceeding now pending in the aforesaid court.

Dated this 18th day of September, 1951.

J. Earl Major, Chief Judge, U. S. Court of Appeals, Seventh Circuit.

[fol. 140] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 2825

EASTERN MOTOR EXPRESS, INC., A.C.E. TRANSPORTATION Company, Inc., The Akron-Chicago Transportation Company, Incorporated, All States Freight, Inc., Chicago Express, Inc., Continental Transportation Lines, Inc., Cooper-Jarrett, Inc., Dixie Ohio Express Co., Interstate Motor Freight System, Kelleher Motor Freight Lines, Inc., Kramer Bros. Freight Lines, Inc., Liberty Motor Freight Lines, Incorporated, Long Transportation Co., Mid-State Freight Lines, Inc., Midwest Freight Forwarding Co., Motor Cargo, Inc., Roadway Express, Inc., Spector Motor Service, Inc., Summit Fast Freight, Inc., Transamerican Freight Lines, Inc., Yankee Lines, Inc., Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants,

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, Intervening Plaintiff

MOTION FOR LEAVE TO INTERVENE—Filed October 15, 1951

To the Honorable Judges of the United States District Court for the Southern District of Indiana, Terre Haute Division:

I

The Secretary of Agriculture of the United States, under Rule 24 of the Rules of Civil Procedure, hereby moves the Court for an order permitting him to intervene as a plaintiff in this action so that he may make and establish the claims set forth in the proposed complaint attached hereto.

II

[fol. 141] The Secretary of Agriculture was a party in interest in the proceeding before the Interstate Commerce Commission entitled "Ex Parte No. MC-43, *Lease and Interchange of Vehicles by Motor Carriers*", out of which this court action arose; and he may intervene in this action as a matter of right, as contemplated by Title 7, section 1291, and Title 28, section 2323, of the United States Code. For convenience of the Court there is quoted below the said section 1291 of Title 7, being section 201 of the Agricultural Adjustment Act of 1938:

> "(a) The Secretary of Agriculture is authorized to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the Commission shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.
>
> "(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the Commission shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

"(c) For the purposes of this section, the Interstate Commerce Commission is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture.

"(d) The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products."

Wherefore, the Secretary of Agriculture prays that an order be entered permitting him to intervene in this action and to file the proposed complaint attached hereto.

[fol. 142] Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney.

Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C.

[fol. 143] IN UNITED STATES DISTRICT COURT
COURT

Civil Action 2825

[Title omitted]

COMPLAINT—Filed October 17, 1951

I

Intervening plaintiff, the Secretary of Agriculture of the United States (herein referred to as the Secretary), brings this complaint to suspend, enjoin, annul and set aside the order of the Interstate Commerce Commission (herein referred to as the Commission) entered on May 8, 1951, in a proceeding before the Commission entitled "Ex Parte No. MC-43, *Lease and Interchange of Vehicles by Motor Carriers.*" The jurisdiction of this court is founded upon [fol. 144] sections 205(g) and 205(h), of the Interstate

Commerce Act (49 U.S.C. 1946 ed. 305(g) and 305(h)), sections 1336, 1398, 2284 and 2321 to 2325, inclusive, of the Judicial Code (28 U.S.C. 1946 ed. Supp. IV 1336, 1398, 2284 and 2321-2325), and section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1946 ed. 1291).

II

The United States of America is named as a party defendant pursuant to section 2322 of the Judicial Code (28 U.S.C. 1946 ed. Supp. IV 2322).

III

The Commission is an administrative tribunal, created by the Act to Regulate Commerce approved February 4, 1887 (24 Stat. 383), with specifically vested powers and duties respecting interstate commerce under the said Act and the acts amendatory thereof and supplemental thereto, hereinafter referred to as the Interstate Commerce Act.

IV

By petition dated October 14, 1949, the Secretary sought leave to intervene in Ex Parte No. MC-43, *Lease and Interchange of Vehicles by Motor Carriers.* The petition was granted by order of the Commission dated October 25, 1949, and the Secretary actively participated in all subsequent phases of the administrative proceeding.

V

Ex Parte No. MC-43, *Lease and Interchange of Vehicles by Motor Carriers,* was instituted on January 9, 1948, by the Commission, Division 5, by means of the issuance on its own motion of an order instituting an investigation into the lawfulness of the vehicle interchange and lease practices of motor common and contract carriers of property subject to the Commission's jurisdiction.

[fol. 145] Formal hearings were held in Washington, D.C., and St. Louis, Missouri. After such hearings, briefs were filed by various parties; a proposed report of the hearing examiner was served upon the parties; exceptions and replies thereto were filed; and the Commission, Divi-

sion 5, on June 26, 1950, entered an order modifying that proposed by the examiner.

On October 30, 1950, oral argument was heard by the entire Commission and on May 8, 1951, the Commission issued its final order to become effective August 1, 1951. On July 16, 1951, the Secretary filed a petition for reopening and reconsideration with the Commission. A copy of the Secretary's petition is attached hereto as an appendix. This petition and other similiar petitions were denied by the Commission on August 1, 1951.

The Secretary adopts by reference appendixes "A" to "C", inclusive, attached to the original plaintiffs' bill of complaint, under Rule 10(c) of the Rules of Civil Procedure (28 U.S.C. 1946 ed. 10(c)), as if set forth herein in full.

VI

The Secretary alleges that the said order of the Commission dated May 8, 1951, in Ex Parte No. MC-43, *Lease and Interchange of Vehicles by Motor Carriers*, is based upon errors of law, exceeds the statutory authority of the Commission, and is unlawful, arbitrary, unreasonable and null and void for the following reasons:

(1) The Commission is without authority under sections 202(a), 203(a) (14) and (15) and 204 of the Interstate Commerce Act (45 U.S.C. 1946 ed. 302(a); 303(a) (14) and (15), and 304) or any other provision of such Act to issue rules and regulations limiting the right of motor carriers to utilize leased equipment in conducting their operations; [fol. 146] (2) Rules 207.4(a)(3) and (4) specified in the Commission's order contravene the clear intent and purpose of sections 208(a) and 209(b) of the Interstate Commerce Act (49 U.S.C. 1946 ed. 308(a) and 309(b)), which expressly forbid the Commission to impose in certificates of public convenience and necessity and permits terms, conditions or limitations restricting the right of common and contract carriers by motor vehicle to augment their equipment and facilities as the development of their respective businesses and the demands of the public shall require;

(3) The order of the Commission is unlawful, arbitrary, unreasonable and null and void for the reason that Rules

207.4(a)(3) and (4) provided for therein virtually nullify the agricultural exemptions contained in sections 203(b)(4a), (5) and (6) of the Interstate Commerce Act (49 U.S.C. 1946 ed. 303(b)(4a), (5) and (6));

(4) The order of the Commission is contrary to the National Transportation Policy as contained in the Interstate Commerce Act (49 U.S.C. 1946 ed. immediately preceding section 1) in that Rules 207.4(a)(3) and (4) specified therein prohibit operators of motor vehicles transporting agricultural commodities and farm supplies under section 203(b)(4a), (5) and (6) of the Interstate Commerce Act (49 U.S.C. 1946 ed. 303(b)(4a), (5) and (6)) from trip-leasing equipment to Commission-regulated carriers and thereby result in increased mileage without cargo and higher transportation costs to the public; and

(5) Assuming, *arguendo*, that the Commission has authority to issue rules governing lease and interchange of equipment, the rules specified in the Commission's order are arbitrary and unreasonable.

[fols. 147-148] VII

Wherefore, the Secretary prays that the Court suspend, enjoin, annul, and set aside the order of the Commission entered in the proceeding entitled "Ex Parte No. MC-43, *Lease and Interchange of Vehicles by Motor Carriers*" on May 8, 1951, and that the Secretary have such other and further relief in the premises as in equity may appertain and as may be deemed by the Court fit and proper.

Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney. Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C.

Certificate of Service [Omitted in printing]

[fol. 149] APPENDIX TO COMPLAINT

Before the Interstate Commerce Commission

PETITION OF THE SECRETARY OF AGRICULTURE FOR REOPENING AND RECONSIDERATION—July 16, 1951

Comes now the Secretary of Agriculture of the United States and respectfully requests the Interstate Commerce Commission:

(1) To reopen this proceeding and to reconsider the report and order entered on May 8, 1951;[1]

(2) To vacate and set aside the said report and order;

(3) To adopt the report and order of Division 5 entered herein on June 26, 1950; or, in the alternative,

(4) To exclude vehicles transporting agricultural commodities and farm supplies from the provisions of Rule 207.4(a)(3) of the order of May 8, 1951,[1] which prohibits continuance of the long-established practice of trip-leasing motor carrier equipment.

In its report and order the Commission disregards the benefits accruing to the shippers of agricultural commodities, to the Commission-authorized carriers, and to the carriers operating under the agricultural commodity exemption in section 203(b)(6) of the act from the practice of trip-leasing equipment. The agricultural industry is one which requires the most flexible transportation service [fol. 150] available for the marketing of its products. Producers and shippers often-times do not know from one week to another where it will be most advantageous for them to market their products. Because of this need for flexibility the agricultural commodity carriers have come to occupy an increasingly important place in the marketing process. The operations of many exempt carriers have become geared to the special needs of different segments of the industry. Such carriers cannot easily be replaced by Commission-authorized carriers because the

[1] Although this case was decided on May 8, 1951, the decision was not released until May 17, 1951.

operating authorities issued to the latter carriers invariably contain route, territorial, or commodity restrictions which make it impossible for them to perform the flexible service required by agriculture.

The exempt carriers have long followed the practice of leasing their equipment, with drivers, to Commission-authorized carriers for backhauls to the general vicinity of their respective bases of operation. That this trip-leasing practice benefits shippers as well as the carriers themselves is readily apparent. The Commission-authorized carriers rarely, if ever, possess sufficient equipment to handle seasonal peak movements, and should they acquire additional equipment for that purpose the added equipment obviously would be operated at much less than full capacity during the remainder of the year. Much of the equipment required is refrigerated or ventilated equipment which Commission-authorized carriers often do not provide. The latter carriers can serve the public by avoiding such unnecessary expenditures for equipment to be used only during peak seasonal movements. If exempt carriers are to be prevented from trip-leasing their equipment for return movements they must of necessity increase their rates on the predominantly one-way movements in order to balance the non-revenue return movements. Similarly, if Commission-authorized carriers are unable to trip-lease their equipment for return movements they too must increase their rates to compensate for the backhauls of empty equipment. Such rate increases in turn are passed back to the producers [fol. 151] and shippers. Trip-leasing, therefore, represents an efficient utilization of motor carrier equipment and is economical to producers, shippers, and carriers alike. It is particularly important at this time that we utilize to the utmost all transportation facilities. This is no time to condone wasteful transportation.

II

At page 36 of the report of the Commission the following statement appears:

> The record indicates that the interstate common carriers serving Florida generally do not transport perishable fruits and vegetables northbound, appar-

ently because of the lack of adequate equipment and operating authorities that are restricted either as to routes or territory. Almost 100 percent of this traffic is transported in vehicles of dealers or carriers that specialize in transporting such commodities exclusively and have refrigerated or semi-refrigerated equipment * * * The common carriers domiciled in the north, which have rights to serve Florida, either directly or through interchange, lack equipment to transport the perishable commodities on return trips, and apparently are willing to have a good share of the southbound traffic transported under lease by the exempt carriers in order to avoid empty return movements from the south. Clearly, this is not a healthy condition from the standpoint of regulation. The transportation of general commodities should be performed by authorized carriers.

The superficial treatment here accorded the highly important matter of operations under section 203(b)(6) of the act is readily apparent. The Commission overlooks both existing law and Commission practice. The exempt carriers of agricultural commodities northbound from Florida cannot obtain Commission authority since such transportation is exempt from the certificate and permit requirements of the act. See *Determination of Exempted Agricultural Commodities* (decided April 13, 1951); *Interstate Commerce Commission* v. *Dunn*, 166 Fed. (2nd) 116; *Interstate Commerce Commission* v. *Service Trucking Co.* (C.A. 3, F. 2nd, opinion filed January 11, 1951).[2] Furthermore, with respect to the return movements of general [fol. 152] commodities, it is well known that the Commission does not grant certificates and permits for the transportation of such commodities from the indefinable origin territories which would be required in order to meet the backhaul needs of agricultural commodity haulers. As

[2] In its release of February 21, 1951, the Commission announced its intention not to appeal the *Service Trucking Co.* case to the U. S. Supreme Court, but to follow it in all jurisdictions.

indicated above, the shippers of the products of agriculture too often do not know from week to week where they will be marketing their products, and the exempt haulers likewise do not know from where it will be necessary for them to return their empty equipment.

III

In addition, the decision of the Commission is silent with respect to operations conducted under the exemption contained in section 203(b)(4a) relating to the transportation by farmers of their own commodities and supplies and under the exemption contained in section 203(b)(5) relating to transportation by agricultural cooperative associations. These are companion provisions to section 203(b)(6). What has been said in the foregoing sections of this petition respecting trip-leasing requirements on backhauls is equally applicable to individuals and cooperatives operating under sections 203(b)(4a) and 203(b)(5).

IV

Wherefore, the Secretary of Agriculture requests the Commission

(1) To reopen this proceeding and to reconsider the report and order entered on May 8, 1951;

(2) To vacate and set aside the said report and order;

(3) To adopt the report and order of Division 5 entered herein on June 26, 1950; or, in the alternative,

(4) To exclude vehicles operated under sections 203(b)(4a), 203(b)(5), and 203(b)(6) from the provisions of Rule 207.4(a)(3) of the order of May 8, 1951, which prohibits continuance of the long-established practice of trip-leasing motor carrier equipment.

[fol. 153] Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, H. M. Nicholson, Transportation Specialist, Traffic Management Division, Transportation and Warehousing Branch, Produc-

tion and Marketing Administration, Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney, United States Department of Agriculture, Washington 25, D. C.

Certificate of Service [Omitted in printing]

[fol. 154] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE BY THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE—Filed November 5, 1951

Now comes petitioner, The National Industrial Traffic League, in accordance with the provisions of Rule 24(c) of the Federal Rules of Civil Procedure and under Title 28, U.S.C., section 2323, and shows to the court that it has an interest in the matters involved in the above entitled cause and seeks to be admitted as a party thereto; and in that behalf states:

I

Petitioner is a voluntary association, with principal office in the District of Columbia, composed of persons, firms, corporations and associations engaged or interested [fol. 155] in the transportation of property in interstate commerce by all forms of transportation agencies subject to the provisions of the Interstate Commerce Act and the jurisdiction of the Interstate Commerce Commission, including motor carriers.

II

Petitioner was a party to and actively participated in the underlying proceedings before the Interstate Commerce Commission under Ex Parte No. MC-43 in which were entered the reports and orders of May 8, 1951, and July 20, 1951, which the plaintiffs seek to restrain and to have annulled and set aside by this court.

Petitioner desires to support the plaintiffs herein and seeks the same relief prayed for in the Bill of Complaint.

Wherefore, said petitioner, The National Industrial Traffic League, respectfully prays leave to intervene in the above entitled civil action in support of plaintiffs and be made a party thereto with the right to appear and be heard in all further matters and proceedings therein.

Nuel D. Belnap, Robert N. Burchmore, John S. Burchmore, Attorneys for The National Industrial Traffic League, Intervening Petitioner.

Walter, Burchmore & Belnap, Of Counsel, 2106 Field Building, Chicago 3, Illinois.

[fol. 156] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENING COMPLAINT OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE—Filed November 5, 1951

I

Petitioner is a voluntary association, with principal office in the District of Columbia, composed of persons, firms, corporations and associations engaged or interested in the transportation of property in interstate commerce by all forms of transportation agencies subject to the provisions of the Interstate Commerce Act and the jurisdiction of the Interstate Commerce Commission, including motor carriers.

II

The Interstate Commerce Commission after due investigation and hearings in a certain proceeding instituted on its own motion and known as Ex Parte MC-43, made and [fol. 157] entered a report dated May 8, 1951, which prescribed certain rules and regulations to govern motor common and contract carriers of property under Part II of the Interstate Commerce Act. Said report is described in the Bill of Complaint of plaintiffs herein. The Commission

also entered certain orders in said proceeding dated May 8, 1951 and July 20, 1951, which are set forth in the Bill of Complaint.

III

Petitioner was a party and actively participated in the hearings and oral argument before the Interstate Commerce Commission in said Ex Parte MC-43 and filed briefs and exceptions therein. Petitioner here joins plaintiffs in seeking a decree of this Court annulling and setting aside the aforesaid report and order of the Commission and restraining enforcement of the regulations therein set forth.

In the aforesaid underlying proceedings, your petitioner undertook to present the interest in general of manufacturing and commercial firms who are shippers and receivers of freight, transported by motor common carriers throughout the United States and in respect particularly of preserving the freedom and right of motor common carriers to lease vehicles and to operate leased vehicles in the transportation of property under their certificates and franchises.

IV

In the aforesaid underlying proceedings your petitioner took the position that the Commission has no authority in law, nor has it heretofore attempted to exercise such [fol. 158] authority, by the prescription of rules and regulations, to broaden, enlarge or modify the substantive provisions of the Interstate Commerce Act; and that the proposed regulations would amount to administrative legislation beyond the terms or requirements of said Act. Petitioner avers that the Commission had no authority in law to enter the aforesaid report and prescribe the regulations therein set forth.

V

Your petitioner further took the position in the hearings in said proceedings that the proposed regulations were intended to control all arrangements for physical exchange of equipment between authorized carriers, inconsistently with long standing practices among railroads and among motor carriers, and on a basis not required by or recognized in the Interstate Commerce Act. Petitioner avers that the

regulations subsequently adopted in the Commission's report are likewise inconsistent with such practices and on a basis not required or recognized in the statute.

VI

Your petitioner further took the position in said proceedings that the proposed regulations (thereafter promulgated) would decrease flexibility in truck usage by motor carriers, would produce uneconomical conditions in motor transportation, would increase transportation costs, would result in additional empty truck mileages and lower load factors; that the ultimate result of any such regulations, interfering with the leasing of motor vehicles by regulated carriers to augment their owned equipment, under terms [fol. 159] which are not by statute declared in any way to be unlawful, is against the shipper interest and against the public interest. The findings of the aforesaid report are not sufficient to support the order and are not based upon substantial evidence of record.

VII

Petitioner adopts the averments of Sections 28, 29, 30 and 31 of the Bill of Complaint of the plaintiffs herein and subscribes to the said averments as though set forth in this petition of intervention.

VIII

Petitioner submits that the final report and order of the Interstate Commerce Commission entered May 8, 1951, is beyond the athority and jurisdiction of the Commission to enter, that the regulations therein prescribed are unsound and unreasonable and unnecessary to proper administration of the Interstate Commerce Act and that the requirements of said regulations would be in restraint of full performance by motor common carriers of their duty of transporting property as common carriers under their certificates and franchises.

Wherefore, The National Industrial Traffic League respectfully prays that judgment be entered enjoining, setting aside and annulling the Interstate Commerce Commission's aforesaid order of May 8, 1951, as amended by the order

[fol. 160] of July 20, 1951, and that the Court grant such further relief as it deems just and proper.

Nuel D. Belnap, Robert N. Burchmore, John S. Burchmore, Attorneys for The National Industrial Traffic League, Intervening Petitioner.

Walter, Burchmore & Belnap, 2106 Field Building, Chicago 3, Illinois.

[fol. 161] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AND TO BE MADE PARTY PLAINTIFF AND TO ADOPT COMPLAINT FILED BY EASTERN MOTOR EXPRESS, INC., A.C.E. TRANSPORTATION COMPANY, ET AL—Filed October 12, 1951.

Comes now Walter F. Jones, Jr., Public Counsellor of Indiana, and respectfully represents to the Court that said Public Counsellor has an interest in the subject matter in controversy in the above-entitled cause, and desires to intervene in and become a party-plaintiff to said proceeding, and to adopt plaintiff's complaint and for grounds of the proposed intervention says:

1. That Indiana Annotated Statutes, Section 54—111 (Burns Replacement 1951) provides among other things that the Public Counsellor shall be entitled to appear in proceedings and suits and actions in which the subject matter of the action affects the patrons of any public utility or the public.

2. That in addition to the above-mentioned Indiana Statute petitioner respectfully invites the attention of the Court to the provisions of the United States Code, Title 28, Section 45 (a) relating to court proceedings in connection with orders of the defendant Interstate Commerce Commission, [fol. 162] Among other things, this section provides:

" * * * Provided, further, That communities, associations, corporations, firms, and individuals who are

interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the provisions of the aforesaid sections relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General therein."

3. That the public as shippers and receivers of freight by common carriers is an interested party and will be affected adversely by the Interstate Commerce Commission's Order Ex Parte No. MC-43, decided May 8, 1951, if allowed to become effective.

4. That said Interstate Commerce Commission Order in Ex Parte No. MC-43 affects the now existing general pattern of motor vehicle practice and operation by certain common carriers and this will affect the cost standard, quality, and caliber of service presently being furnished to the shippers and receivers of freight by common carrier.

5. That said order heretofore referred to will result in the curtailment of vitally needed common carrier service to the public.

6. That said order heretofore referred to will affect operating expenses of the existing motor vehicle carriers [fol. 163] affected by said order and will in all probability necessitate increased charges in present transportation tariffs charged the public.

Wherefore, petitioner, Public Counsellor of Indiana, prays leave to intervene in this cause and be made a party-plaintiff and to join in and adopt the complaint filed by Eastern Motor Express, Inc., A.C.E. Transportation Company, et al. and to participate in all proceedings herein,

and for all other relief necessary and proper in the premises.

Respectfully submitted, (s) Walter F. Jones, Jr., Public Counsellor of Indiana.

Walter F. Jones, Jr., 401 State House, Indianapolis, Indiana.

Affidavit of Service [Omitted in printing]

[fol. 164] In United States District Court

Order Permitting Intervention of Secretary of Agriculture—October 17, 1951

The motion of the Secretary of Agriculture of the United States for leave to intervene as plaintiff being submitted for the consideration of the Court and the Court being sufficiently advised in the premises sustains said motion and leave is granted the Secretary of Agriculture of the United States to intervene as party plaintiff.

Comes now the Secretary of Agriculture of the United States by his attorneys and files complaint, which is as follows: (H.I.)

[fol. 165] In United States District Court

[Title Omitted]

Order Permitting Intervention of National Industrial Traffic League—November 5, 1951

The National Industrial Traffic League files motion for leave to intervene as party plaintiff, which motion is as follows: (H.I.) and said motion being submitted for the consideration of the Court and the Court being sufficiently advised in the premises sustains said motion, and leave is granted.

Comes now The National Industrial Traffic League and files intervening complaint, which complaint is as follows: (H.I.)

[Proof of Service—Omitted in Printing]

[fols. 166-167] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING PUBLIC COUNSELLOR OF INDIANA TO INTERVENE—Filed October 17, 1951

The Public Counsellor of Indiana, having filed a Petition to Intervene in the above action under the provisions of the Indiana Annotated Statutes, Section 54-111 (Burns Replacement 1951) and under the provisions of the United States Code, Title 28, Section 45 (a), which in substance provides that individuals having an interest in the subject matter in controversy relating to action or suit brought as a result of action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, is, effective this 17th day of October, 1951, permitted to intervene and participate in all further proceedings for this Court as party plaintiff.

By Order of William E. Steckler, Judge.

[fol. 168] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

MOTION OF CERTAIN RAILROADS TO INTERVENE AS DEFENDANTS —Filed September 20, 1951

[Title omitted]

Come now certain Class I Railroads, hereafter referred to as the "Intervening Railroads", a list of which is attached, made a part hereof, and marked Appendix A, and move for leave to intervene as parties defendant under the provisions of Rule 24(c) of the Federal Rules of Civil Procedure and in support of this Motion respectfully state:

I

The Legal Basis for Intervention

The Act of June 25, 1948, c.646, 62 Stat. 970, as amended by the Act of May 24, 1949, c.139, Sec. 116, 63 Stat. 105, 28 U.S.C.A. 2323 provides:

> "The Interstate Commerce Commission and *any party or parties in interest to the proceedings before the Commission,* in which an order or requirement is made, *may appear as parties of their own motion and as of right,* and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party." (Emphasis supplied)

These Intervening Railroads were parties to the proceedings before the Interstate Commerce Commission which were productive of the rules and regulations complained of by the Plaintiffs in the instant action. This being so, these Intervening Railroads are, as a matter of right, entitled to intervene in the instant proceedings and to be heard in defense of the rules and regulations of the Interstate Commerce Commission. But even if this inter- [fol. 169] vention, as a matter of right, were not created by the Statutes of the United States, these Intervening Railroads respectfully submit that their intervention should be allowed because of their great interest in the rules and regulations of which the Plaintiffs complain. The interests of these Intervening Railroads will be set forth briefly below.

II

The Participation of the Intervening Railroads in the Proceedings Before the Interstate Commerce Commission

Throughout the proceedings before the Interstate Commerce Commission—which were instituted by a notice served upon the authorized motor carriers and published in the Federal Register on January 8, 1948, and terminated by the Commission's Order of August 1, 1951, denying the several Petitions for Reconsideration for the Commis-

sion's Report and Order dated May 8, 1951—these Intervening Railroads have participated in and expressed a vital interest in the proceedings and the rules and regulations then in contemplation.

As demonstrative of the participation of these Intervening Railroads in the proceedings before the Commission, several of the Eastern Railroads filed a statement setting forth their views as to what the Commission's rules and regulations should contain to properly regulate the leasing and interchange practices of the motor carriers. These views were considered and adopted in part by Examiner Henry C. Lawton in his Proposed Report dated August 26, 1949, containing rules and regulations recommended for adoption by the Commission.

Thereafter, when several motor carriers and motor carrier associations filed numerous Exceptions to the Examiner's Proposed Report and recommended rules and regulations, all of these Intervening Railroads located in the east and the south filed a joint Reply to the Exceptions. Division 5 of the Interstate Commerce Commission, in its Report and Order dated June 26, 1950, considered the views expressed by the Railroads in their Brief and their Reply [fol. 170] but nevertheless formulated rules and regulations that were generally out of line with the proposals and recommendations of the Examiner and generally contrary to the views expressed by the Railroads.

Believing that the rules and regulations of Division 5 were inadequate and improper to deal with unsound practices which had been developing from the leasing and interchange arrangements carried on by several of the motor carriers, *all* of these Intervening Railroads filed a joint Petition for Reconsideration of the Report and Order of Division 5 and accompanied this Petition with request for oral argument before the entire Commission. This Petition and the petitions of others for reconsideration were granted and oral argument was held before the entire Commission on October 30 and 31, 1951.

Counsel representing all of these Intervening Railroads appeared before the Commission and presented an oral argument in the course of which he advocated the promulgation of rules and regulations incorporating many of the

features of the Examiner's proposed rules and regulations.

Thereafter, on May 8, 1951, the Commission issued a Report and Order incorporating rules and regulations to become effective August 1, 1951. These rules and regulations include some of the features advocted by these Intervening Railroads during the extensive proceedings before the Commission.

Many of the motor carriers and motor carrier associations, apparently dissatisfied with the Commission's rules and regulations, filed several Petitions for Reconsideration. To these Petitions all of these Intervening Railroads filed a joint Reply. In an Order dated August 1, 1951, the Commission denied the Petitions for Reconsideration but thereafter postponed the effective date of its rules and regulations until November 1, 1951.

It can be said that throughout the proceedings these Intervening Railroads have participated as parties, have presented views and arguments that have been considered by the hearing Examiner, Division 5 of the Commission and by the full Commission. Furthermore, the final Report and Order of the Commission includes in the pres- [fol. 171] cribed rules and regulations individual rules and regulations which incorporate some of the recommendations and proposals of these Intervening Railroads.

III

The Interest of the Intervening Railroads in the Rules and Regulations Attacked by the Plaintiffs

These Intervening Railroads are and have been for a great number of years in intense competition with the motor carriers coming within the regulatory orbit of the Interstate Commerce Commission. There is no likelihood that this competitive struggle will lessen or come to an end within the foreseeable future. Since 1887 the Railroads have been under a growing scheme of regulation administered by the Interstate Commerce Commission. This scheme confines the sphere of the Railroads' activities into well defined and clearly marked channels. Movements within these channels are scrutinized and governed.

Regulation in the motor carrier industry is newer, having come into being with the passage of the Motor Carrier

Act of 1935, which became Part II of the Interstate Commerce Act. The scheme of regulation for the motor carrier industry is generally similar to that applicable to the Railroad industry. However, there are vast segments of the motor carrier industry which are exempted from regulation. For example, vehicles hauling agricultural commodities and vehicles used in private carriage are exempt from all economic regulation and are only subject to the Commission's safety rules.

The Motor Carrier Act includes provisions for limiting the available amount of regulated transportation so that the supply of transportation will be substantially commensurate with the demand. This control of the supply of public transportation is established by the provisions of the Motor Carrier Act which require carriers to secure certificates of convenience and necessity to serve the public as common carriers and permits to serve the public as con- [fol. 172] tract carriers. These certificates and permits limit the territory and the area which may be served by designated carriers.

The scheme for controlling the amount of public motor carrier service available has been jeopardized by the practice of the certificated motor carriers bringing non-carriers into the regulated family of transportation solely upon the caprice and whim of the certificated carriers and without the approval of the Commission. The certificated carriers accomplish this by a device known as the trip-lease.

By leasing a vehicle owned and driven by a non-certificated carrier on a per trip basis, the carrier, on its own initiative and without the approval of the Commission, in effect certificates a new carrier. This, of course, places the control of the amount of public transportation in the hands of the certificated carriers instead of in the hands of the Commission. By usurping the role of the Commission, the carriers have placed in jeopardy the regulatory scheme which Congress has established for the motor carrier industry. Not only is economic regulation interfered with but the secondary purpose of the Motor Carrier Act to promote highway safety is also thwarted. So long as public transportation is performed by the certificated carriers, the Commission has known entities to deal with in

enforcing its highway regulations. Where, however, the carriers, through the device of the trip-lease, place upon those outside of the regulated family responsibilities which the Motor Carrier Act and the Commission have placed upon the certificated carriers in return for their franchises to serve the public on a limited competitive basis, the Commission cannot feasibly carry out the intentions of Congress set forth in the Motor Carrier Act.

This breakdown of regulation has given the motor carriers using owner-operated vehicles on a trip-lease basis, an unfair competitive advantage which is detrimental not only to the railroads and a considerable segment of the regulated motor carrier industry, but, what is more important, to the public dependent upon regulated transportation to take care of its shipping requirements.

[fol. 173] The rules and regulations prescribed by the Commission will, if allowed to become effective, materially assist in preventing this deterioration of regulation and implement the efforts of the Commission to carry out the scheme of regulation created by Congress in the Motor Carrier Act. For this reason these Intervening Railroads desire to participate in the instant proceedings before Your Honorable Court, such participation to include the presentation of a Brief and an oral argument, if your Court hears oral argument.

IV

The Prayer of the Intervening Railroads

These Intervening Railroads move for leave to participate in the instant proceedings as parties Defendants to defend the rules and regulations prescribed by the Interstate Commerce Commission, such participation to include inter alia presentation of a Brief and oral argument, if your Court hears oral argument.

Respectfully submitted, Charles Clark, Joseph F. Johnston, Frank W. Gwathmey, Joseph H. Hayes, James W. Nisbet, R. T. Wilson, Jr., Carl Helmetag, Jr.

Clifford O. Shandy, 10-11 Tune Building, 502½ Wabash Avenue, Terre Haute, Indiana, Of Counsel.

[fol. 174] AFFIDAVIT OF SERVICE

[Omitted in printing]

[fol. 175] APPENDIX A TO MOTION

List of Intervening Railroads

The below listed Railroads, which include substantially all of the Class I Railroads in the United States, are the individual carriers which together are termed the "Intervening Railroads" or "Railroads" for simplicity. When used the terms "Intervening Railroads" and "Railroads" include each of these named Railroads:

The Akron, Canton & Youngstown Railroad.
Alabama Great Southern R.R.
Ann Arbor Railroad.
Atchison, Topeka and Santa Fe Ry Co. (The).
Atlanta and West Point R.R. Co.
Atlantic Coast Line R.R.
Baltimore & Ohio Railroad.
Bangor & Aroostock Railroad Company.
Bessemer and Lake Erie Railroad Company.
Boston & Maine Railroad.
Carolina and Northwestern Ry.
Central of Georgia Ry. Co.
Central Railroad Company of New Jersey.
Central Railroad Company of Pennsylvania.
Central Vermont Railway, Inc.
Charleston & Western Carolina Ry.
Chesapeake & Ohio Railway.
Chicago, Burlington & Quincy R.R.
Chicago Great Western Ry.
Chicago & Illinois Midland Ry. Co.
Chicago, Indianapolis and Louisville Railway Company.
Chicago, Milwaukee, St. Paul and Pacific R.R.
Chicago and North Western Ry.
Chicago, Rock Island and Pacific R.R. Co.
Cincinnati, New Orleans & Texas Pacific Ry.
Clinchfield R.R.

Delaware, Lackawanna & Western Railroad Company (The).
Delaware and Hudson Railroad Corporation (The).
Denver & Rio Grande Western R.R. Co. (The).
Detroit, Toledo and Ironton Railroad Company.
Detroit and Toledo Shore Line Railroad.
Duluth, South Shore and Atlantic R.R. Co. (P. L. Solether, Trustee).
Elgin, Joliet and Eastern Ry. Co.
Erie Railroad.
Florida East Coast Ry. (Scott M. Loftin and John W. Martin, Trustees).
Fort Dodge, Des Moines & Southern Ry.
Georgia R.R.
Georgia Southern & Florida Ry.
Grand Trunk Railway System.
Great Northern Ry.
Great Western Railway (The).
Green Bay and Western R.R. Co.
Gulf, Mobile and Ohio R.R.
Illinois Central Railroad.
Kansas City Southern Ry.
[fol. 176] Lehigh and New England Railroad Company.
Lehigh Valley Railroad.
Long Island Rail Road Company (The).
Louisville & Nashville R.R. Co.
Maine Central Railroad Company.
Midland Valley R.R.
Minneapolis & St. Louis Ry. Co. (The).
Missouri-Kansas-Texas R.R. Co.
Missouri Pacific R.R. (Guy A. Thompson, Trustee).
Nashville, Chattanooga & St. Louis Ry.
New Orleans & Northeastern R.R.
New York Central System.
New York, Chicago and St. Louis Railroad Company (The).
New York, New Haven and Hartford Railroad Company (The).
New York, Ontario and Western Railway.
New York, Susquehanna and Western Railroad.
Norfolk and Western Railway.

Northern Pacific Ry.
Pennsylvania Railroad Company (The).
Pittsburgh & Lake Erie Railroad.
Pittsburgh & West Virginia Railway Company (The).
Reading Company.
Richmond, Fredericksburg and Potomac R.R. Co.
Rutland Railway Corporation.
St. Louis-San Francisco Ry. Co.
St. Louis Southwestern Ry. Lines.
Seaboard Air Line R.R. Co.
Southern Pacific Co.
Southern Railway Co.
Texas and Pacific Ry. Co. (The).
Toledo, Peoria & Western R.R.
Union Pacific Railroad.
Virginian Railway Company (The).
Wabash Railroad Company.
Western Maryland Railway Company.
Western Pacific R.R.
Western Ry. of Alabama.

[fol. 176a] IN DISTRICT COURT OF THE UNITED STATES

NOTICE OF MOTION [Omitted in printing]

[fol. 177] CERTIFICATE OF SERVICE [Omitted in printing]

[fol. 178] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION OF TEAMSTERS UNION FOR LEAVE TO INTERVENE—Filed October 9, 1951

In accordance with the provisions of section 2323 of Title 28, United States Code, providing in part that in suits to

enjoin, set aside or annul an order of the Interstate Commerce Commission,

> "any party or parties in interest to the proceedings before the Commission, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party,"

the International Brotherhood of Teamsters-Chauffeurs-Warehousemen & Helpers of America hereby respectfully moves for leave to intervene as a party defendant, and to enter the appearance of the undersigned as its counsel in the above-entitled suit.

The Teamsters Union was a party in interest to the proceedings before the Commission, participating at all stages of the proceedings. It was represented by counsel continuously throughout the hearing, presented the testimony of ten witnesses, and proferred additional witnesses, the testimony of four of whom was stipulated. It presented briefs or pleadings (1) analyzing the evidence compiled at the hearing, (2) excepting to the Examiner's proposed report and order, (3) responding to the exceptions of others, (4) petitioning for reconsideration of Division 5's proposed report and order, and (5) opposing the petitions for reconsideration of the Commission's final report and order entered herein. It presented oral argument to the full Commission and, as indicative of the recognition of its extensive interest and participation in the proceedings, was allotted more time for oral argument than any other party.

Its practical interest derives from the fact that, as the Commission's Report of May 8, 1951 noted: "About 200,000 of the 1,000,000 members of this union drive vehicles in [fol. 179] operations that are subject to our jurisdiction." (Commission Report, Sheet 14.) The Union necessarily has a significant interest in the soundness of basic conditions in an industry in which so many of its members make their livelihood.

The grant of this motion to intervene will not unduly

delay or prejudice the adjudication of the rights of the original parties herein. A copy of the proposed intervening answer is hereto attached.

International Brotherhood of Teamsters-Chauffeurs-Warehousemen & Helpers of America, by its Attorneys, Burton K. Wheeler, Edward K. Wheeler, 704 Southern Building, Washington, D. C., J. Albert Woll, Bowen Building, Washington, D. C.

Of Counsel, Wheeler & Wheeler.

October 2, 1951.

AFFIDAVIT OF SERVICE [Omitted in printing]

[fol. 180] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION TO INTERVENE—Filed November 2, 1951

Now come the Chicago Suburban Motor Carriers Association, Inc., the Advance Transportation Company, Werner Transportation Company, and the carriers whose names are listed in the Appendix hereto, by Franklin R. Overmeyer, their attorney, and represent unto the court as follows:

I

Petitioners hereby move the court for leave to intervene as defendants in support of the decision of the Interstate Commerce Commission, except in the extent that rental of equipment based upon a percentage of revenue earned with the equipment is prohibited.

II

This petition is made pursuant the provisions of Rule 24(c) of the Federal Rules of Civil Procedure: The Act of June 25, 1948, c. 646, 62 Stat. 970, as amended by the

Act of May 24, 1949, c. 139, sec. 116, 63 Stat. 105, U.S.C.A. 2323 provides that any parties in interest to a proceeding by the Commission in which an order is made may appear as parties on their own motion and as of right and be represented by their counsel in any action involving the validity of such order or any part thereof.

III

The petitioners are either engaged in operations as certificated common carriers serving numerous points in the states of Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio or as certificated common carriers serving [fol. 181] points in the Chicago Suburban area. Said carriers conduct operations either with company-owned equipment or leased equipment. Some of said carriers use both company-owned and leased equipment.

IV

The intervenor, Chicago Suburban Motor Carriers Association, by its counsel, appeared in the proceeding hereinafter referred to before the Commission. Said intervenor appeared on behalf of its constituent members. Each of said members and the other intervenors listed in the Appendix hereto, being carriers deriving their authority from and being governed by the Interstate Commerce Commission, were made parties by the Commission to such proceedings and are bound by the terms and provisions of its order and regulations which plaintiffs now challenge. In addition, the intervenor, Werner Transportation Company, in its own right and as a member of the Illinois-Minnesota Motor Carrier's Conference appeared as a party to such proceeding and is bound by such order and regulations. Certain other intervenors in the Appendix were also members of such Conference, were parties to such proceeding, and now desire to appear in their individual capacity in support of the Commission's order and regulations.

V

Petitioners aver that the act of the Commission in prohibiting payment of rental for equipment based upon a

percentage of the revenue earned is not warranted. This prohibition infringes upon the right of the owner-operator and the carrier to contract upon the basis of their own judgment. The evils found to exist with respect to leasing will be effectively dealt with by the regulations of the Commission without the necessity of depriving the carriers of the right to bargain and contract on their own terms with owner-operators.

Petitioners pray as follows:

(a) That an order may be entered authorizing petitioners to appear as parties defendant in support of the order and regulations of the Commission with the exception above noted.

[fol. 182] (b) That they may adopt the answer filed herein by the Commission with the exception noted.

(c) That they may by their counsel participate in these proceedings with the right to file briefs and be heard in any oral argument for which this court may provide.

Chicago Suburban Motor Carriers Assn., Inc., Advance Transportation Company, Werner Transportation Company, et al, by Franklin R. Overmeyer, their Attorney.

CERTIFICATE OF SERVICE [Omitted in printing].

[fol. 183] A. No. 1 Express & Cartage Co., Inc., Chicago, Illinois.

Acme Motor Freight Service, Inc., Chicago, Illinois.

Advance Transportation Company, Milwaukee, Wisconsin.

J. Artim & Son, Hammond, Indiana.

Aurora Motor Express, Aurora, Illinois.

Austgen Express & Storage Company, Chicago Heights, Illinois.

Burren Transfer Company, Elgin, Illinois.

C.P.T. Freight, Inc., Hammond, Indiana.

Carlstedt Motor Service, Batavia, Illinois.

Century Cartage Co., Inc., Chicago, Illinois.

Coil's Motor Service, Montgomery, Illinois.

Columbia Cartage Co., Inc., Chicago, Illinois.

Consolidated Cartage Co., Inc., Chicago, Illinois.

Co-Ordinated Transport, Inc., Chicago, Illinois.
Dailey Freight Lines, Chicago, Illinois.
Dex Motor Service, Lombard, Illinois.
Downs Motor Transport, Inc., McHenry, Illinois.
R. J. Dumont Cartage Service, Aurora, Illinois.
Elgin Storage & Transfer Co., Elgin, Illinois.
Enterprise Transfer Company, Chicago, Illinois.
Exon Motor Service, Inc., Libertyville, Illinois.
Fox Valley Express, Aurora, Illinois.
Frederickson Storage, River Forest, Illinois.
Gold Star Motor Service, Inc., Barrington, Illinois.
Hanson's Transfer, St. Charles, Illinois.
Hoekstra Motor Express, Chicago, Illinois.
Houdek Motor Service, Chicago, Illinois.
Joliet Warehouse & Transfer Co., Joliet, Illinois.
Kehe Motor Service, Arlington Heights, Illinois
Krema Trucking Company, Chicago, Illinois.
Kutzler Cartage, Waukegan, Illinois.
F. Landon Cartage Co., Chicago, Illinois.
Leoni Motor Express, Chicago Heights, Illinois.
Libertyville Cartage Co., Inc., Libertyville, Illinois.
McMaster-Faure Corp., Hammond, Indiana.
Martin Transfer & Storage Co., Aurora, Illinois.
Maywood Motor Express Co., Inc., Maywood, Illinois.
Edward J. Meyers Co., Chicago, Illinois.
National Cartage Co., Chicago, Illinois.
Fred Olson & Son Motor Service Co., Chicago, Illinois.
Overton Motor Express, Inc., Aurora, Illinois.
Pagoria's Motor Express, Inc., Chicago Heights, Illinois.
Paine Motor Express, Inc., Woodstock, Illinois.
Pearson Motor Service, Crystal Lake, Illinois.
Pennoyer Merchants Transfer Co., Chicago, Illinois.
J. B. Reed Motor Express, Aurora, Illinois.
Rudolf Express Co., Bradley, Illinois.
Joseph T. Ryan Cartage, Inc., Chicago, Illinois.
Scherer Freight Lines, Ottawa, Illinois.
Schiek Motor Express, Inc., Joliet, Illinois.
Service Cartage Co., Inc., Lemont, Illinois.
Shepley Motor Express, Joliet, Illinois.
N. C. Sorensen Motor Express Co., Inc., Chicago, Illinois.
Taylor Transfer Company, Chicago, Illinois.

Valentine Transfer & Storage Co., Aurora, Illinois.
Webber Cartage Line, Inc., Waukegan, Illinois.
Welsh Bros. Motor Service, Hammond, Indiana.
West Shore Transport Co., Inc., Hammond, Indiana.
Nelson Brothers Transfer, Geneva, Illinois.
M. A. Soper Company, Chicago, Illinois.
Liberty Trucking Co., Chicago, Illinois.
Tucker Motor Transport Co., Chicago, Illinois.
W. W. Young & Son, Inc., Chicago, Illinois.
Central Wisconsin Motor Transport Co., Chicago, Illinois.
Checker Express Company, Milwaukee, Wisconsin.
Commercial Truckers, Racine, Wisconsin.
Cushman Motor Delivery Co., Chicago, Illinois.
[fol. 184] Northwestern Transfer Co., Milwaukee, Wisconsin.
Royal Transit, Inc., Milwaukee, Wisconsin.
J. L. Scheffler Forwarder, Inc., Chicago, Illinois.
Service Transport Company, Racine, Wisconsin.
Yule Truck Lines, Inc., Milwaukee, Wisconsin.
H & W Motor Express Company, Dubuque, Iowa.
Dakota Transfer & Storage Company, Minot, North Dakota.
Hennepin Transportation Company, Minneapolis, Minnesota.
Werner Transportation Company, Minneapolis, Minnesota.
Moland Brothers Trucking Company, Duluth, Minnesota.
Hart Motor Express, St. Paul, Minnesota.
Chippewa Motor Freight, Inc., Bloomer, Wisconsin.
Briggs Transfer Company, Eau Claire, Wisconsin.

[fol. 185] In United States District Court

[Title omitted]

Order Permitting Certain Railroads to Intervene—Filed October 1, 1951

[File endorsement omitted]

Certain named Railroads, a list of which is attached hereto, made a part hereof and marked Appendix A, having

filed a Motion to Intervene in the above action under the provisions of the Act of June 25, 1948, c.646, 62 Stat. 970, as amended by the Act of May 24, 1949, c.139, Sec. 116, 63 Stat. 105, 28 U.S.C.A. 2323, which in substance provides that parties participating in proceedings before the Interstate Commerce Commission may, as a matter of right, intervene in proceedings before the Courts involving the validity of the Commission's action, are, effective this the 1st day of October, 1951, permitted to intervene and participate in all further proceedings for this Court as parties Defendants.

By Order of William E. Steckler.

[fols. 186-187] APPENDIX A

List of Intervening Railroads

Omitted. Printed side page 175 ante.

[fol. 188] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING TEAMSTERS UNION TO INTERVENE—Filed October 15, 1951

The motion of Teamsters Union for leave to intervene as party defendant being submitted for the consideration of the Court and the Court being sufficiently advised in the premises now sustains said motion and the Teamsters Union is granted leave to intervene as party defendant.

Comes now Teamsters Union, as party defendant, and files answer, which is as follows: (H.I.)

PROOF OF SERVICES [Omitted in printing]

[fol. 189] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING CHICAGO SUBURBAN MOTOR CARRIERS ASSOCIATION TO INTERVENE—Filed November 5, 1951

The petition of Chicago Suburban Motor Carriers Association, Inc., the Advance Transportation Company, Werner Transportation Company to intervene being submitted for the consideration of the Court and the Court being sufficiently advised in the premises grants said parties leave to intervene.

PROOF OF SERVICES [Omitted in printing]

[fol. 190] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed October 15, 1951

Now comes the UNITED STATES OF AMERICA, a defendant herein, by counsel, and in answer to the complaint says:

I

The Department of Agriculture has filed a motion to intervene as a plaintiff in this case and has also filed an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

II

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their

respective position through their own counsel, the United States does not oppose the Commission's order, but does not participate in its defense.

[fol. 191] III

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plaintiffs or the intervening complaint of the Department of Agriculture.

H. G. Morison, Assistant Attorney General, John F. Baecher, Special Assistant to the Attorney General, James E. Kilday, Special Assistant to the Attorney General, John H. D. Wigger, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Matthew E. Welsh, United States Attorney, Attorneys for the United States of America.

CERTIFICATE OF SERVICE [Omitted in printing]

[fol. 192] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed September 14, 1951

[File endorsement omitted]

The Interstate Commerce Commission, defendant in the above-entitled case, hereinafter called the Commission, now, and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs 1 to 21, inclusive of the complaint, the Commission admits the same,

to the extent that the carriers specified in said paragraphs are authorized to operate as motor carriers under lawful certificates issued by the Interstate Commerce Commission and presently outstanding.

[fol. 193]

II

Answering the allegations of paragraph 22 of the complaint, the Commission admits the allegations of the first two subparagraphs of the complaint. The Commission alleges that the fact that its decision was dissented from by one of its members is of no legal significance. The Commission denies that its said order referred to in paragraph 22 is harsh, drastic, unworkable or unlawful in any respect whatsoever.

III

Answering the allegations of paragraph 23 of the complaint, the Commission admits the truth thereof, except the allegations of the last sentence of paragraph 23, which are denied.

IV

Answering the allegations of paragraph 24 of the complaint, the Commission admits the allegations of the first three subparagraphs of said paragraph 24, but denies that the procedure detailed in said subparagraphs was only a "token compliance with some of the provisions of the Administrative Procedure Act."

Answering the allegations of subparagraph 4 of paragraph 24 of the complaint, the Commission alleges that in an investigation, as stated in this subparagraph, involving "motor transportation agencies and virtually all shippers of freight throughout the United States", the Commission has to exercise a reasonable discretion as to requests for hearings, and further alleges that there was no abuse of discretion on the part of the Commission in not holding hearings at other points. The Commission further alleges that the proceedings before it involved all the motor carriers operating in interstate commerce throughout the United States, and directs attention to the fact that out of these hundreds of carriers, there are only 21 carriers attacking the [fol. 194] regulations herein and that, consequently, by

far the large majority of such carriers appear to be in vor of the regulations here under attack. The Commission further questions the right of an infinitesimal segment of the motor carriers affected by its order, nationwide in character, from suing to set aside such regulations, applicable also to a large majority of motor carriers not parties to the suit.

Answering the allegations of the fifth subparagraph of paragraph 24, the Commission admits the same.

V

Answering the allegations of paragraph 25 of the complaint, the Commission admits the same except that it denies that the Examiner's Proposed Report contains "harsh, drastic, unworkable and unlawful rules and regulations concerning leasing and interchange of vehicles."

VI

Answering the allegations of the first subparagraph of paragraph 26 of the complaint, the Commission refers the Court to its report of June 26, 1950, referred to therein, for a more complete statement of its conclusions and findings than is contained in said subparagraph. The Commission denies that the recommendation of its Examiner would have imposed "harsh, drastic, unworkable and unlawful rules and regulations upon the plaintiffs and motor carrier industry of the United States generally", and alleges that said plaintiffs have no authority to speak for "the motor carrier industry of the United States."

Answering the allegations of subparagraph (2) of paragraph 26 of the complaint, the Commission denies that its report and order of June 26, 1950, exceeded the powers granted it, or included certain burdensome and unreasonable regulations affecting the motor carrier industry, and [fol. 195] further denies that the rules and regulations contained in its order now under review were arbitrary, capricious or illegal in any respect. The Commission further admits, in answer to the allegations of the last sentence of subparagraph (2) of paragraph 26, that said order of Division 5 did not confiscate the property of these

plaintiffs, and would not have caused irreparable damage to these plaintiffs and the shipping public.

Answering the allegations of the third subparagraph of paragraph 26, the Commission admits the same, except that the Commission alleges that the date referred to in the first line should be correctly shown as June 26, 1950. The Commission denies that any parties to the proceedings before it sought to have the Commission "impose harsh, drastic, unworkable and unlawful rules and regulation upon these plaintiffs and the motor carrier industry of the United States."

Answering the allegations of the last subparagraph of paragraph 26 of the complaint, the Commission admits that oral argument was had before it on October 30, 1950, but denies that the order of Division 5, referred to in said subparagraph, contained burdensome and unlawful regulations.

VII

Answering the allegations of the first four subparagraphs of paragraph 27 of the complaint, the Commission admits the same, but in this connection refers the Court to its decision of May 8, 1951, for a more full and complete statement of its findings and conclusions than is contained in said paragraph.

Answering the allegations of subparagraph (5) of paragraph 27 of the complaint, the Commission alleges that on August 17, 1951, at the request of the Court, the effective date of its order was postponed from September 1, 1951, to November 1, 1951. The Commission denies that its [fol. 196] rules and regulations are "harsh, drastic, unworkable and unlawful" in any respect.

Answering the last two subparagraphs of paragraph 27 of the complaint, the Commission admits the same, except that the Commission alleges that the fact that Commissioner Lee dissented was a matter of no legal significance.

VIII

Answering the allegations of paragraph 28 of the complaint, the Commission admits that each of the plaintiffs is now, and for some years has been, both prior to and after the enactment of the Motor Carrier Act of 1935, engaged

in practices involving the leasing and interchange of vehicles, but the Commission denies the other allegations contained in paragraph 28 and the subparagraphs thereof.

IX

Answering the allegations of paragraphs 29 and 30 of the complaint, the Commission denies the same.

X

Answering the allegations of paragraph 31 of the complaint the Commission admits that in the order complained of, the ban on use of vehicles engaged in transporting agricultural products in interstate commerce by authorized carriers on the return movement, is not to become effective until six months after the effective date of the rest of the order. The Commission denies the other allegations contained in said paragraph 31 and alleges that plaintiffs herein have no right to speak for the agricultural industry or carriers engaged in hauling agricultural products.

XI

Answering the allegations of the first subparagraph of paragraph 32 of the complaint, the Commission denies the same.

[fol. 197] Answering the allegations of the second subparagraph of paragraph 32, the Commission has no knowledge as to the truth of such allegations.

The Commission denies the allegations contained in the other subparagraphs of paragraph 32, except as to the allegations contained in subparagraphs (a) to (u) thereof, as to which the Commission disclaims information.

The Commission denies the allegations of the last subparagraph of paragraph 32 that "millions of dollars in freight charges" will be lost and destroyed in whole or in part should the order involved become effective.

XII

Answering the allegations of paragraphs 33, 34 and 35 of the complaint, the Commission denies the same.

XIII

Answering the allegations of the first subparagraph of paragraph 36 of the complaint, the Commission admits the same.

Answering the allegations of the second subparagraph of paragraph 36 of the complaint, the Commission disclaims information sufficient to form a belief as to the truth of such allegations.

XIV

Answering the allegations of paragraph 37 of the complaint, the Commission denies the same.

XV

Answering the allegations of paragraph 38 of the complaint, the Commission denies the same.

[fol. 198]

XVI

Answering the allegations of paragraph 39 of the complaint, the Commission denies the same.

XVII

Further answering the allegations of the complaint, the Commission admits and alleges that in the proceedings in the docket before this Court, the parties thereto, including the plaintiffs herein, were, and that each of them was, accorded a full and fair hearing; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said reports of June 26, 1950 and May 8, 1951, were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearing and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceedings, including the plaintiffs herein, its said reports

of June 26, 1950 and May 8, 1951, the report of May 8, 1951, being annexed to and made part of the complaint as Exhibit "A"; that said report included the commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its said report and subsequent orders were based.

The Commission further alleges that the findings and conclusions of said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

[fols. 199-200] The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the complaint herein.

The Commission further alleges that the findings and conclusions in said report of May 8, 1951, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said report and order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the complaint. The Commission denies that its said report and orders are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said complaint, or for any other reason or reasons. The Commission denies that its said report and orders cause, or will cause, plaintiffs either irreparable damage or any damage if said report and orders are not enjoined.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report referred to and made part of the complaint as Exhibit "A".

All of which matters and things the Commission is ready

to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, By E. M. Reidy, Associate Chief Counsel, S. R. Howell, Assistant Chief Counsel.

Daniel W. Knowlton, Chief Counsel, Of Counsel.

September 10, 1951.

[fol. 201] IN UNITED STATES DISTRICT COURT

ANSWER OF THE INTERVENING RAILROADS—Filed October 1, 1951

[File Endorsement Omitted]

The Intervening Railroads, which include substantially all of the larger Class I American Railroads and which are named in the Appendix attached hereto, marked Appendix A and included as a part of this Answer, having filed a Petition of Intervention under the provisions of the Act of June 25, 1948, c.646, 62 Stat. 970, as amended by the Act of May 24, 1949, c.139, Sec. 116, 63 Stat. 105, 28 U.S.C.C. 2323, answer and say:

1-21 inc. Allegations 1 to 21 inc. of the Complaint are admtted.

22. So much of Allegation 22 as is concerned with the provisions of law under which this action arises and the previous proceedings before the Interstate Commerce Commission is admitted. That portion of the Allegation discussing the dissenting opinion of Commissioner Lee, Chairman of Division 5 of the Interstate Commerce Commission, is irrelevant to the issues and contains assertions which are untrue and is, therefore, denied.

23. That portion of Allegation 23 relating to the Orders of the Commission initiating the proceedings is admitted. The remaining portions of the Allegation are denied.

[fol. 202] 24. Those portions of Allegation 24 relating to the appointment of examiners to preside at the hearings, the dates on which the hearings were held, and the assertions regarding the filing of Briefs are admitted. The remaining portions of the five paragraphs making up Allegation 24 are argumentative in some instances, irrelevant in other instances, untrue in other instances and scandalous in other instances, and are, therefore, denied.

25. Those portions of Allegation 25 relating to the date of the filing of a Proposed Report by Examiner Lawton and the filing of Exceptions by various parties to the Examiner's Proposed Report are admitted. The remaining portions of the Allegation are denied.

26. Those portions of the four paragraphs of Allegation 26 setting forth dates on which various Orders were issued and on which various steps in the proceedings were held before the Commission are admitted. The remaining portions of the Allegation are argumentative in some instances, untrue in other instances and irrelevant in still other instances and are, therefore, denied.

27. Those portions of Allegation 27 setting forth the dates of certain actions by the Commission are admitted with the exception of the Allegation relating to the effective date of the Commission's Order, which is denied. That portion of the Allegation relating to the exhaustion of administrative remedies before the Commission is also admitted. All of the remaining portions of the Allegation are argumentative in some instances, untrue in other instances and irrelevant in still other instances and are, therefore, denied.

28. Those portions of Allegation 28 relating to the operations of motor carriers using leased owner-operator vehicles and the effect that the rules and regulations will have upon such motor carriers; the effect that the complained of rules and regulations will have upon the shipping public and the national defense efforts; and the discrimina- [fol. 203] tory and confiscatory nature of the complained portions of Allegation 28 are argumentative in some of rules and regulations are denied. All of the remaining instances, untrue in other instances and irrelevant in still other instance. It is impossible to segregate from the

argumentative, untrue and irrelevant portions of the allegations those portions which may be true, non-argumentative and relevant and, therefore, all of the remaining portions of Allegation 28 are also denied.

29. All of Allegation 29 is denied.

30. All of Allegation 30 is denied.

31. All of Allegation 31 is denied.

32. Those portions of Allegation 32 relating to the past financial results of the operations of the Plaintiff motor carriers and the extent of their financial investments are admitted. All of the remaining portions of the Allegation are denied.

33. All of Allegation 33 is denied.

34. All of Allegation 34 is denied.

35. All of Allegation 35 is denied.

36. The Intervening Railroads are without information to furnish a basis for ascertaining the truth of Allegation 36 and, therefore, all of Allegation 36 is denied.

37. All of Allegation 37 is denied.

38. All of Allegation 38 is denied.

39. The first paragraph of Allegation 39 is denied. The numbered sub-paragraphs of Allegation 39 are believed to contain the Plaintiffs' prayers for relief and are answered as follows:

[fol. 204] *Allegation 39—Paragraph 1.* The prayer for a temporary restraining order should be denied. The complained of order containing rules and regulations of the Commission is adequately supported by materials and data furnished the Commission by numerous parties appearing at the various hearings; is neither capricious nor unreasonable; is neither an exercise of power beyond the statutory authority of the Commission nor an exercise of power in contradiction of the provisions of the Constitution of the United States, and is neither discriminatory; unfair nor improper in any other respect. Rather, the rules and regulations contained in the Order are legal and a proper exercise of the Commission's quasi-legislative powers to regulate the motor carrier industry to promote highway safety and to foster sound economic conditions among the several regulated forms of transportation, all in the interest of, and in accordance with the terms of the National Trans-

portation Policy. Since the rules and regulations complained of are legal and proper, any temporary restraining order would unnecessarily interfere with the powers and obligations which Congress has delegated to the Interstate Commerce Commission. Furthermore, the Commission has postponed the effective date of the complained of rules and regulations until November 1, 1951, so that at least until that date the Plaintiffs can suffer no harm.

Allegation 39—Paragraph 2. This prayer for relief should be granted.

Allegation 39—Paragraph 3. This prayer for relief should be granted.

Allegation 39—Paragraph 4. This prayer for relief should be denied, for the reasons set forth in answering Allegation 39, Paragraph 1 above.

[fol. 205] *Allegation 39—Paragraph 5.* This prayer for relief should be denied for, as set forth in the answer to Allegation 39, Paragraph 2 of the rules and regulations complained of, are legal, reasonable and proper in every respect and, therefore, the rules and regulations should be allowed to remain effective or become effective, as may be appropriate.

Allegation 39—Paragraph 6. This prayer for relief should be denied. Since the complained of rules and regulations are legal, reasonable and proper in every respect, no relief which would interfere with the rules and regulations becoming effective would be proper.

These Intervening Railroads are ready and willing to maintain and support the allegations set forth in their Answer at such time as Your Honorable Court shall direct and further pray that the Complaint be dismissed.

Charles Clark, Joseph F. Johnston, Frank W. Gwathmey, Joseph H. Hayes, James W. Nisbet, R. T. Wilson, Jr., Carl Helmetag, Jr., Counsel for the Intervening Railroads.

Clifford O. Shandy, 10-11 Tune Building, 502½ Wabash Avenue, Terre Haute, Indiana, Of Counsel.

[fol. 206] AFFIDAVIT OF SERVICE

[Omitted in printing]

[fols. 207-208] APPENDIX A

List of Intervening Railroads

[Omitted. Printed side page 175 ante]

[fol. 209] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION TO INTERVENING COMPLAINT OF WALTER F. JONES, JR., PUBLIC COUNSELLOR OF INDIANA—Filed October 29, 1951.

[File endorsement omitted]

The Interstate Commerce Commission, defendant in the above-entitled case, answers the intervening complaint of Walter F. Jones, Jr., Public Counsellor of Indiana, as follows:

I

Answering the allegations of paragraphs 1 and 2 of the intervening complaint, the Commission, for the purposes of this intervention, admits the same.

II

Answering the allegations of paragraphs 3 to 6, inclusive, of the intervening complaint, the Commission denies the same.

III

Answering the allegations of the intervening complaint, whereby intervening petitioner adopts the complaint filed

by Eastern Motor Express, Inc., et al., in this case, as a further answer thereto, the Commission adopts by reference as an answer to this intervening complaint, its answer [fol. 210] to the original complaint filed by the Eastern Motor Express, Inc., et al., and hereby incorporates by reference, and makes a part hereof; its answer to said original complaint of the Eastern Motor Express, Inc., et al.

Wherefore, having fully answered, the Commission prays that said intervening complaint be dismissed.

Respectfully submitted, By E. M. Reidy, Associate Chief Counsel, S. R. Howell, Assistant Chief Counsel, for the Interstate Commerce Commission.

Daniel W. Knowlton, Chief Counsel, Of Counsel.

October 26, 1951.

[fol. 211] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERSTATE COMMERCE COMMISSION TO COMPLAINT OF SECRETARY OF AGRICULTURE—Filed October 18, 1951

[File endorsement omitted]

The Interstate Commerce Commission, defendant in the above-entitled case, answers the intervening complaint of the Secretary of Agriculture as follows:

I

Answering the allegations of paragraphs I-V, inclusive, of the complaint, the Commission admits the same.

II

Answering the allegations of paragraph VI of the complaint, the Commission denies that its order involved herein is invalid or unlawful for any of the reasons set forth in said paragraph VI, including subparagraphs (1)-(5) thereof, or for any other reason.

[fols. 212-231] Wherefore, having fully answered, the Commission prays that said complaint be dismissed.

Respectfully submitted, By E. M. Reidy, Associate Chief Counsel, S. R. Howell, Assistant Chief Counsel, for the Interstate Commerce Commission.

Daniel W. Knowlton, Chief Counsel, Of Counsel.

October 15, 1951.

[fol. 232] In United States District Court

[Title omitted]

Transcript of Hearing

Appearances

November 19, 1951.

The original Plaintiffs were represented by Mr. Howell Ellis and Milton E. Diehl.

The Department of Agriculture was represented by Mr. Henry A. Cockrum, Attorney, U. S. Department of Agriculture.

[fol. 233] Mr. Walter F. Jones, Jr., Public Counsellor of the State of Indiana.

The National Industrial Traffic League was represented by Mr. Robert N. Burchmore.

The Intervening Railroads were represented by Mr. Carl Helmetag, Jr., Mr. Clifford O. Shandy, and Mr. Amos M. Matthews.

The Teamsters Union was represented by Senator Burton K. Wheeler and Mr. Robert G. Seaks.

The Intervening Truck Lines were represented by Mr. Franklin R. Overmyer.

The United States was represented by Mr. Marshall Hanley, Assistant U. S. Attorney.

The Interstate Commerce Commission was represented by Mr. E. M. Reidy, Associate Chief Counsel, I. C. C., and Mr. S. R. Howell, Assistant Chief Counsel, I. C. C.

Be it remembered, That in the United States District Court for the Southern District of Indiana, Indianapolis

Division, at the United States Court House in the City of Indianapolis, Indiana, commencing on November 19, 1951, at 10 o'clock a.m., the above entitled cause being at issue came on for trail before the Honorable Otto Kerner, Presiding Judge, the Honorable Casper Platt and the Honorable William E. Steckler, and the proceedings upon the trial were in the words and figures following, to-wit:

[fol. 234] Judge Kerner: What case have we on this morning. Easter Motor Express, Inc., et al, versus United States of America. You may proceed.

Mr. Ellis: (For the Pltfs.) May it please the Court, before proceeding, would it be permissible for me to introduce one or two gentlemen from our side of the case. Mr. Robert N. Burchmore, an attorney from Chicago, Illinois and a member of the bar there, intervening.

Judge Kerner: I am glad somebody is from Chicago; I will feel more at home.

Mr. Ellis: (For the Pltfs.) May I present Mr. Milton Diehl of Washington, D. C. bar, associated with me for the Plaintiffs. Mr. Jones is a member of the bar here and well known to the Court. The gentleman now rising is the Honorable Henry A. Cockrum of Washington, D. C., an attorney for the Secretary of Agriculture of the United States, intervening Plaintiff for this case.

Mr. Reidy: (For I.C.C.) If your Honors please, I represent the Interstate Commerce Commission in this case. I think I know most of the attorneys, and if I may be permitted to do so, I would like to introduce them. This is Senator Wheeler representing the Teamsters Union, and Mr. [fol. 235] Helmetag, Jr., representing the railroads, and Mr. Howell associated with me on behalf of the Interstate Commerce Commission, and that is about all. Excuse me— Mr. Shandy, the Public Counsellor for the State of Indiana.

Judge Steckler: I think you are in error on that. Mr. Jones is the Public Counsellor of the State of Indiana.

Judge Kerner: We don't want to decide that dispute.

Mr. Reidy: (For I.C.C.) I beg your pardon.

Judge Kerner: You may proceed. I suggest each of you gentlemen state your name for the purpose of the record when you address the Court.

Mr. Ellis: (For the Pltfs.) Yes. Howell Ellis is my name.